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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JEFF SMITH, et al.,

H025175

Plaintiffs and Appellants,

(Monterey County
Superior Court
No. M56481)

v.

MONTEREY HIGH SCHOOL, et al.,

Defendants and Respondents.

_____ /

Plaintiffs Jeff and Charla Smith filed a breach of contract action against defendants Monterey High School (the School) and the Monterey Peninsula Unified School District (the District). The School and the District demurred to the original complaint and to the three successive amended complaints that followed as the superior court sustained the first three demurrers with leave to amend. The court ultimately sustained the fourth demurrer without leave to amend. On appeal, the Smiths' sole contention is that the alleged contract was valid, notwithstanding the fact that it had not been approved by the District's Board of Education. They claim that such approval is only required for contracts of \$50,000 or more. We disagree and affirm the judgment.

I. Background

The operative complaint in this appeal is the third amended complaint. It purports to state a single cause of action for breach of contract and asserts that it is based on Education Code sections 17604 and 17605. The allegations of the third amended complaint are as follows.

The Smiths submitted a proposed written contract to the School under which the Smiths would become the School's "exclusive senior yearbook and dance portrait photography studio" for a three-year period beginning in July 2000. The proposed contract involved "no cost to the School" but instead required each student to pay the Smiths for his or her senior photo and any "dance portrait" photos. The Smiths proposed that they would provide the School with supplies and funds for photography purposes in exchange for this exclusive right to provide senior and dance portrait photos. The proposed contract was reviewed by the School's principal and the "district purchasing department," and the Smiths were advised that "there was no need for a contract approval by the District in this instance."

The Smiths, the School's vice-principal, the School's yearbook advisor, the School's student body advisor and the student editor of the School's yearbook signed the proposed contract in May 2000. The Smiths thereafter expended funds to prepare to provide the photography services contemplated by the proposed contract. In June 2000, the School repudiated the proposed contract, and it confirmed the repudiation in writing in August 2000. The School informed students that they could obtain senior photos from any provider of their choosing. The Smiths filed a claim against the District for breach of contract, but their claim was denied. They then filed this action.

The Smiths alleged that a "District 'Board Policy' delegates the authority to determine the merits of purchase requisitions within its guidelines," but they also

alleged that the proposed contract “was **no proposed purchase** by the District or the School.” (Original emphasis.) The three “Board Policy” documents, entitled BP 3140, BP 3141 and BP 3142, were solely concerned with purchasing. BP 3140, the most general of the three policies, explicitly stated “[n]o contract shall be an enforceable obligation against the district until it has been ratified by the Board of Education.” BP 3141 stated “[u]pon ratification by the Board, the purchase order becomes a valid contract between the district and the Vendor.” BP 3142 stated that the “Purchasing Department” was responsible for “[a]ll purchasing transactions of the district” and expressly stated that “[a]ll such transactions shall be in accordance with federal and state laws.” The Smiths claimed that the District and the School should be equitably estopped from denying the validity of the proposed contract because they had intentionally misled the Smiths to their detriment. The Smiths sought compensatory damages in excess of \$270,000.

After sustaining demurrers with leave to amend to the original, first amended and second amended complaints, the court sustained the demurrer to the third amended complaint without leave to amend because the Smiths had failed to “allege facts that would establish an exception to Education Code §17604 or the applicability of Education Code §17605.” Judgment was thereafter entered dismissing the Smiths’ action. The Smiths filed a timely notice of appeal.

II. Analysis

“A board of school trustees is an administrative agency created by statute and invested only with the powers expressly conferred by the Legislature and cannot exceed the powers granted to them.” (*Paterson v. Board of Trustees of the Montecito Union School District, et al.* (1958) 157 Cal.App.2d 811, 818.) “Every school district shall be under the control of a board of school trustees or a board of

education.” (Ed. Code, § 35010, subd. (a).) “The governing board of any school district may execute any powers delegated by law to it or to the district of which it is the governing board, and shall discharge any duty imposed by law upon it or upon the district of which it is the governing board, and may delegate to an officer or employee of the district any of those powers or duties. The governing board, however, retains ultimate responsibility over the performance of those powers or duties so delegated.” (Ed. Code, § 35161.)

“A school district acts through a board with powers limited both in scope and by the method of their exercise, and is bound by the action of its board only when the latter acts with respect to a matter within a power conferred and in conformance with required formalities.” (*Santa Monica Unified Sch. Dist. v. Persh* (1970) 5 Cal.App.3d 945, 952, internal quotation marks omitted.) “Persons dealing with a school district are chargeable with notice of limitations on the district’s power to contract.” (*Id.* at p. 946.) “[T]he principle of estoppel is not applicable to a municipal agency which has not acted in compliance with a statute which is the measure of its power.” (*Id.* at p. 953.)

Since the District’s Board of Education (the Board) was the sole source of any contractual power in the District, and its powers were limited to those expressly granted to it by the Legislature, the Smiths’ breach of contract cause of action could not succeed unless they could allege that the proposed contract had been approved or ratified by the Board or executed by an employee of the District to whom the Board had delegated the power to execute the proposed contract. The Smiths have never alleged that the Board approved or ratified the proposed contract. Therefore, their only hope of success was to allege that the Board had delegated the power to execute the proposed contract to an employee of the District.

While admitting that the proposed contract involve “**no proposed purchase**” by the District or the School, the Smiths claimed that the three Board Policies concerning purchasing constituted delegations by the Board of the authority to enter into the proposed contract. (Original emphasis.) Two of the three policies explicitly stated that no contract would be valid until ratified by the Board. The third policy stated that the “Purchasing Department” was responsible for “[a]ll purchasing transactions of the district” and expressly stated that “[a]ll such transactions shall be in accordance with federal and state laws.”

The Smiths claim that Education Code sections 17604 and 17605 establish that these Board Policies validate the proposed contract. First of all, since two of the three policies required Board ratification, they cannot assist the Smiths in their quest for a delegation by the Board. It is only the third policy, BP 3142, that could possibly serve the Smiths’ ends. However, neither of the Education Code sections upon which they rely support their contention.

Education Code section 17604 provides that a school district’s governing board *may* delegate the power to contract to the district superintendent or the superintendent’s designee, but it restricts that power by requiring that any contract made by the superintendent or the designee is not valid unless the governing board approves or ratifies the contract by a duly passed motion. Again, since there was no allegation that the Board had ratified the proposed contract, Education Code section 17604 does not validate the proposed contract.

Education Code section 17605 is no more helpful to the Smiths’ cause. “The governing board by majority vote may adopt a rule, delegating to any officer or employee of the district as the board may designate, the authority to purchase supplies, materials, apparatus, equipment, and services. No rule shall authorize any officer or employee to make any purchases involving an expenditure by the district in excess of the amount specified by Section 20111 of the Public Contract

Code. *The rule shall prescribe the limits of the delegation as to time, money, and subject matter. All transactions entered into by the officer or employee shall be reviewed by the governing board every 60 days.*” (Ed. Code, § 17605, emphasis added.)

It is possible that BP 3142 was a valid delegation of the Board’s authority to the “Purchasing Department” to make purchases not in excess of \$50,000 (the amount specified in Public Contract Code section 20111). However, the Smiths specifically alleged that the proposed contract did *not* involve any “purchase,” and the proposed contract was *not* executed by any representative of the “Purchasing Department.” Consequently, the execution of the proposed contract was not within the “limits of the delegation” set forth in BP 3142.

In sum, there is no merit to the Smiths’ appeal. The court did not err in sustaining the demurrer to the third amended complaint without leave to amend.

III. Disposition

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Rushing, P.J.

Wunderlich, J.